

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4636 of 1985

Date of decision: 15-8-97

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

NALINIBEN G VAHIA

Appearance:

MR S.R. Divetia for Petitioner

None present for Respondent No. 1

MR RN SHAH for Respondent No. 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15-8-97

CAV JUDGEMENT

This special civil application is directed by the petitioner State of Gujarat against the order of the Gujarat Secondary Education Tribunal, Ahmedabad, dated 19-10-1984 and 26th April, 1983. The original order is of 26th April, 1983, and the order dated 19th October 1984 is only an order under which some correction is made in the earlier order. The respondent teacher - Naliniben G. Vahia - approached the Gujarat Secondary Education Tribunal with the grievance that she worked continuously right from 1948 till the date of filing of the said application and she is entitled to receive salary and other benefits admissible to secondary teachers as per rule. Her leave for the period from 12-6-1968 to 24-6-1969 was sanctioned by the Government and as such she should have been treated as in continuous service, but the Government has not given those benefits to her. Not only this, she has not been given the benefit of fixation in the revised pay-scale as recommended by the Sarela Pay Commission as well as further revision of the pay-scale as per the Desai Pay Commission. Under the order dated 26th April, 1983 the appeal was allowed and the respondent school was directed to fix her salary as admissible to teachers working in secondary school as per Sarela Pay Commission in 1969 and after calculating due increments re-fix her salary with effect from 1-1-1974 as per Desai Pay Commissioner, after taking her service as continuous right from 1948 till to date. Further direction was given for preparation of bill etc., and payment of arrears to the respondent teacher in compliance of the said order.

2. Learned counsel for the petitioner contended that the Tribunal has committed serious error of jurisdiction in passing the said order. Respondent No.1 teacher was in Government service at Bhavnagar till she resigned by her letter dated 9-9-1969 which came to be accepted on 30th October, 1969. She remained absent from her duties from 26th June, 1967 to 12th June, 1969 and the leave has been sanctioned for the said period as under:

26-6-67 to 11-8-67 - 47 days (half pay)
12-8-67 to 11-10-67 - 61 days (Leave without pay)
7-11-67 to 14-4-68 - 159 days (Leave without pay)
24-6-68 to 12-6-69 - 354 days (Leave without pay)

Her leave was not sanctioned for the period from 12th June, 1969 to 30th October, 1969. Though during the substantial period in dispute she was in employment at Ahmedabad in a private school, which was a serious

misconduct, still lenient view has been taken. The question of grant of benefit of revised pay-scale as recommended by Sarela Pay Commission and Desai Pay Commission doesn't arise in her case. She was not in Government service at any rate from 30th October, 1969 and as such the order of the Tribunal to grant benefit of revised pay-scale as recommended by the Desai Pay Commission does not arise. The revised pay-scales as per recommendations of the Desai Pay Commission were given with effect from 1-1-1973. So far as the benefit of pay scale as recommended by the Sarela Pay Commissioner with effect from 1-6-1967 is concerned, benefit of increments which fell due after 1st April, 1967 could not have been given.

3. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The Tribunal while passing the impugned order dated 26th October, 1983 has not considered the fact that before Desai Pay Commission recommendations were given effect to, the respondent had already resigned from service and, therefore, there was no question of giving any benefit to her of this revised pay-scales. The Tribunal has failed to consider that the respondent teacher remained absent from duty. Not only she remained absent from duty, but in fact she has taken another employment which was a serious misconduct. Be that as it may. Leave has been sanctioned for a substantial period as leave without pay, and on sanction of leave without pay, it has to be considered she could have been entitled for increments which fell due during this period. Over and above, another important aspect has altogether been left out for consideration that the period from 12th June, 1969 to 30th October, 1969 has not been regularised.

4. Taking into consideration the totality of the facts of this case the order of the Tribunal cannot be allowed to sustain and accordingly the same is quashed and set aside. The matter is remanded back to the Tribunal for deciding the same afresh after taking into consideration the aforesaid facts as noticed in this judgment. Rule is made absolute in the aforesaid terms with no order as to costs.

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